1951.

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File No. O.C. P.C. / 51 / pt. I

Legal Department.

A BRANCH

Subject:— Opinions under the Code of Criminal Procedure 1898

(for subsequent pts. pt see pt II)

156 (E)

File No. O.C.P.C./51 pt. I.

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S.R.C. 16/5

Office of the R.L.A.

Transfer of pending cases on territorial changes.

Criminal procedure code 1898. Section 7.

The revenue districts of Ahmedabad and Amreli coincide with the sessions divisions of Ahmedabad and Amreli. The 49 cases from the Ghogho Mahal referred to by the D.M. Ahmedabad were, it appears, filed in the Court of the R.M. Dhanduka before the alteration of the Sessions divisions of Ahmedabad and Amreli by transfer of the Ghogho Mahal to the latter division. Consequently the R.M. Dhanduka will have to dispose of these cases pending with him. There is no power in the D.M. to transfer such cases from one district to another and it is only the High Court or the State Government which can exercise this power under sections 526 and 527 of the Code of Criminal Procedure.

Sd/- P.M.Lad,
5/1/51.

Remembrancer of Legal Affairs.

U.R. to H.D. No.389, dated the 6th January 1951.

4-Cs.

H.V.V.
13/6.

Legal Department.

Misconduct of President Magistrate C.S.(C.C. & A)....Rule , 55.

The disciplinary action proposed by the High Court is in respect of the misconduct of Shri Chaman. Steps may therefore be taken by Home Department to hold an inquiry as provided in rule 55 of the Civil Services(Classification Control & Appeal) Rules, 1930 and to deal with him in consultation with the p Public Service Commission.

Sd/- J.R. Dhurandhar,
15/2.

Additional Secretary to Government.

U.R. to H.D. No.2963, dated the 16th February 1951.

A.Co.

M.V.V.
13/6.

Legal Department.

The H.D. view is correct. What the Central Provinces Government wants to know is the procedure followed in this Province for mixed trials. H.D. may inform the Central Provinces Government that the procedure we follow here is the one laid down in sub-section (3) of section 269 of the Code of Criminal Procedure.

Sd/- J.R. Dharmadhar,
15/2.

Additional Secretary to Government.

U.R. to H.D. No. 2975, dated the 16th February 1951.

4-Cs.

M.V.V.
13/6.

Legal Department.

Shri Ladda opinion in the case is herewith forwarded.

Sd/- J.N. Dhurandhar,
6/2.

Additional Secretary to Government.

U.R. to H.D. No.2289, dated the 6th February 1951.

A-Cs.

M.V.V.
13/6.

This is a proposal for enabling Judges of the City Sessions Court to make a reference to the High Court in case they disagree with the verdict of the Jury. I am opposed to that proposal. I am in favour of maintaining in fact the system of jury trial which is prevailing in Bombay island for the last three hundred years. If the Judges are given the opportunity to differ from the Jury, Judges would not take sufficient trouble to explain the case to the Jury, and the Jury m themselves will lose the sense of responsibility.

Legal Department.

Execution of Warrants Criminal Procedure Code,1898.

In extradition cases the procedure mentioned in the Indian Extradition Act, 1903 for the surrender of accused persons from the Part B States which includes the Saurashtra State will have to be followed . It is not clear from Shri Nathurdas Thakar's letter whether the accused in this case were charged with an extraditable offence. The Code of Criminal Procedure will be extended to Part B States with effect from 1st April 1951. (Please see report in the Times of India dated 5th March 1951 p.1). This will enable the Magistrates in the Bombay State to issue processes directly for the arrest of wanted criminals in Part B States without having recourse to extradition proceedings. The applicant may however be informed as at 'A' of H.D. note.

Sd/- .....

Additional Secretary to Government.

U.R. to H.D. No.4105, dated the 13th March 1951.

4-Cs.

M.V.V.
13/6.

Legal Department.

Criminal Procedure Code, sections 190(a), 202,203.

Under section 190(a) of the Criminal Procedure Code, 1898, the Magistrate is bound to take cognisance of an offence on receiving a complaint of facts constituting an offence. He is bound to examine the complainant and can then either issue summons to the accused or order an inquiry under section 202 or dismiss the complaint under section 203 (Umar Ali v. Safar Ali 13 Cal.334 at page 336). He has no option to refer it to the police under section 155 or 156(3) without taking cognisance of it. (In re Janjidas 12 Bom. 161 page 163). It appears therefore that once a complaint is received by the Magistrate under section 190(a) and a process is issued he cannot refer the complaint to the police for investigation for there cannot be a parallel investigation by the police and inquiry by the Magistrate. The view taken by the Public Prosecutor, Baroda is correct.

Sd/- P.M.Lad,
Additional Secretary to Government.

U.R. to H.D. No.4430, dated the 19th March 1951.

4-Ca.

M.V.V.
13/6.

Opinion of the R.L.A.

The view taken by the Home Department is correct. The conviction will have to be got ~~x~~ quashed by moving the High Court in revision first and the Government may then consider the question of granting compensation to this man.

Sd/- J.R.Dhurandhar,
1/4.

Remembrancer of Legal Affairs.

U.R. to H.D. No. 5425, dated the 4th April 1951.

4-Cs.

M.V.V.
13/4.

Office of the R.L.A.

I am in favour of section 411-A of the Code of Criminal Procedure being made applicable to the City Sessions Court.

Sd/- J.R. Dharandhar,
3/4.

Remembrancer of Legal Affairs.

U.R. to H.D. , No.5387, dated the 4th April 1951.

4-Cs.

M.V.V.
13/6.

Office of the R.L.A.

I am in favour of section 411-A of the Code of Criminal Procedure being made applicable to the City Sessions Court.

Sd/- J.R. Dhurandhar,
3/4.

Remembrancer of Legal Affairs.

U.R. to H.D. , No.5387, dated the 4th April 1951.

A.Cs.

M.V.V.
13/6.

Legal Department.

Exercise of additional powers by Magistrate after his transfer from Baroda.

Criminal Procedure Code, sections 12, 37.

In his ~~pm~~ opinion No.10780 dated the 26th September 1949 and No.1652 dated the 6th February 1950, H.L.A. considered the question of continuance after the merger of States of powers of the persons appointed as Magistrate by the States. Those opinions do not cover the question of continuance of special powers of such Magistrates after the merger of the States. Clause 3 of the Baroda State (Application of Laws) Order 1949, provides for the application of the enactments specified in Parts I and II of Schedule I and the Notifications, Orders etc., issued, made or prescribed under such enactments. Clause 5 provides for the repeal of enactments in force in the Baroda State and also of all orders notifications schemes bye-laws or rules made thereunder. Clause 6(3) provides for the continuance in office of any Court, Tribunal, authority, Officer, etc., constituted or appointed under any law in force in the Baroda State and repealed by this order, and further provides that such Court Tribunal, etc., shall be deemed to have been constituted, appointed, registered or recognised under the corresponding enactments extended~~him~~ to the Baroda State by this Order. Section 12 of the Code of Criminal Procedure provides for the appointment of persons to be Magistrate of the First, Second, or Third Class in any District, while section 37 provides for the investment of any Magistrate of the First Class, etc., with any powers specified in the IV Schedule by the Provincial Government or District Magistrate. It is clear that the appointment of a person as a First Class Magistrate to be notified under section 12 is different from the conferment of the

additional powers by a notification under section 37. Shri Chavan's appointment by the Baroda Government as First Class Magistrate under section 12 of the Criminal Procedure Code has been saved by clause 6(3) of the Baroda State (Application of Laws) Order, 1949, but the notification issued by the Baroda Government conferring additional powers under section 37 on Shri Chavan lapsed under clause 5 of that Order, with the result that even though Shri Chavan could continue as First Class Magistrate after the merger of the State he could not exercise the additional powers conferred on him under section 37 by the Baroda Government unless such powers were again conferred on him by the District Magistrate or the Government after merger. The view taken by the High Court is correct.

Sd/- P.M.Lad,
Additional Secretary to Government.

U.R. to H.D.No.5722, dated the 10th April 1951.

A-C#.

M.V.V.
13/6.

Office of the R.L.A.

Code of Criminal Procedure (Amendment) Act, 1951, Sec.25.

Section 25 of the Code of Criminal Procedure(Amendment) Act, 1951 saves the orders made under the law immediately before the day on which this Act comes into force in a Part B State. Therefore orders of arrest or detention made before 1st April 1951 in a Part B State would continue to be lawful even after the Code of Criminal Procedure (Amendment) Act, 1951 comes into force.

Sd/- J.R. Dhurandhar,
28/3.
Remembrancer of Legal Affairs.

U.R. to P. & S.D. No.4968, dated the 29th March 1951.

4-Cs.

M.V.V.
13/6.

Legal Department.

Neither the victim nor the accused are Indian Nationals. The alleged offence was committed outside the territorial limits of the Indian Union and on a foreign ship. The Courts of the Indian Union can, therefore, have no jurisdiction over this offence. (Vide also R.L.A's U.R. No.5675, dated 9-4-1951).

Sd/- P.M.Lad,

Additional Secretary to Government.

U.R. to P. & S.D. , No.6336, dated the 20th April 1951.

4-Cs.

M.V.V.
13/6.

Legal Department.

It is true that Shri Hiralal Sukhanraj Suriya, the tenant in whose name the property stands, has disclaimed any right to the property attached by the Police from the premises; but in his letter Shri Parab admits that when the Police raided the block there were with him Shri Singhvi and two or three other inmates and all of them were put under arrest. Shri Parab is claiming only a part of the property seized by the Police, while Shri Singhvi is claiming some of the remaining items of the property seized by the Police, it is not known whether the two or three other inmates, who were admittedly at the premises when the Police raided the block, have any claim to the property attached by the Police. In the circumstances, it appears that unless all these persons i.e. Shri Singhvi, Shri Parab and two or three other inmates who were in the block, jointly pass a receipt and give a discharge in respect of the property, it would not be safe to return the property to Shri Singhvi and Shri Parab alone as claimed by them. If such a joint discharge is not forthcoming they should be asked to prove their claims in a Court of Law.

Sd/- P.M.Lad,
Additional Secretary to Government.

W.R. to H.D. 338-Confl. dated the 5th April 1951.

A-Cs.

M.V.V.
13/6.

Legal Department.

Sanction for prosecution of a councillor. Bombay District Municipal Act, 1901. sections 16,45.

Criminal Procedure Code,1898. section 197.

It appears that the general body of Wai Municipality had appointed Shri Bajirao Parbatrao Sawant, councillor, Wai Municipality, and another councillor to check the hotels etc. within the jurisdiction of the said Municipality. Accordingly on 11th October 1950 Shri B.P. Sawant checked the hotel of Shri Shankarlal Hiralal Joshi of Wai along with others and found that some of the eatables were stale. A panchanama to that effect was drafted and the matter was pending sanction of the managing committee. In the meantime the accused Shri B.P.Sawant accepted a bribe of Rs.25/- from the hotel owner on 19th October 1950 and was caught red - xx handed by the P.S.I. Anti-corruption Branch and panchas. An offence under section 161 of the I.P.C. was registered at Wai and the offence is being investigated. The Local Self Government and Public Health Department states sanction of Government to prosecute does not seem to be necessary under the Bombay District Municipal Act, 1901, but that Government sanction is presumably necessary under section 197 of the Code of Criminal Procedure, 1898. The papers are shown to the Remembrancer of Legal Affairs to confirm this presumption.

2. Under section 45 of the Bombay District Municipal Act, 1901, a councillor is a public servant within the meaning of section 21 of the Indian Penal Code. But under section 16 the Commissioner if he thinks fit on the recommendation of the Municipality may remove any councillor elected or appointed under this Act, if such councillor has been guilty of misconduct in the discharge of his duties or of any disgraceful conduct, or has become incapable of performing his duties as a councillor. By notification No.6548/33, dated the 15th August 1950 issued under section 3 of the Bombay Commissioners (Abolition of Office) Act,1950, the Director of Local Authority is

P.T.O

appointed as an authority in place of the Commissioner under the District Municipal Act. It is clear from all these provision that the Director of Local Authority can remove a councillor under section 16. Since shri Sawant is removeable by the Director of Local x Authority and not by Government he does not come within the scope of section 197 of the Criminal Procedure Code. Apart from that as he is to be prosecuted for an offence under section 161, I.P.C., no such sanction would be necessary (see Gill v. King, L.R. 75 ~~I~~ I.A. 41; Neogy v. King 51 Bom. L.R. 440). The presumption made by the Local Self Government and Public Health Department is not correct.

Sd/- P.M.Lad,

Additional Secretary to Government.

U.R. to L.S.G. & P.H.D. No.434-Confl. dated the 9th May 1951

4-Cs.

M.V.V.
13/6.

Office of the R.L.A.

Shri V.B. Oke a pleader from Dhulia has suggested by a letter to the Inspector General of Police that hearing of Criminal cases can be expedited and the Criminal Procedure Code be amended in certian x respects. That letter has been forwarded by the Inspector General of Police to Government.

The amendments proposed by Shri Oke are ——

(1) Every man accused of an effence should be a competent witness.

(2) The difference in procedure between summons and warrant cases should go and the procedure should be that the change should be first read out and there should be only one cross examination. In other words, in all cases, the procedure should be that of a summons case.

These proposed amendments are not really amendments of procedure but are in effect withdrawals of certain rights given to the accused by the Criminal Law in India. The analogy of Section 488 Criminal Procedure Code and chapter proceedings in which the opponent is a competent witness has no application.

There is one more proposal of Mr. Oke. He suggests that there should be a permanant Magistrate whose sole function is to go through police papers and advise the police whether or not a case be filed. I do not think this is either necessary or desireable. Mr. Oke does not appear to have considered the full significance of the provisions of chapter X XV (B) and chapter XVI of the Criminal Procedure Code, particularly sections 169,173, 200,202 and 203 which of properly used will nip useless cases in the bud.

No action on Mr. Oke's letter is therefore called for.

Sd/- J.R. Dhurandhar,
24/5.

Remembrancer of Legal Affairs.

U.R. to H.D. No.8301, dated the 26th May 1951.

Legal Department.

The case of an offence under section 447 Indian Penal Code being a summons case a summons shall issue in the first instance and not a warrant (see sections 4(v) and Schedule II of the Criminal Procedure Code).

But under section 90 of the Criminal Procedure Code the Magistrate can issue a warrant of arrest instead of a summons, provided the conditions laid down by that section are satisfied. From the record of the case at present before us it does not appear that the conditions were satisfied and therefore the warrant was bad.

If, however, the conditions of section 90 were satisfied, then the Magistrate had a discretion to issue either a bailable or a non-bailable warrant (see sections 75 and 76 Criminal Procedure Code), though in a case under section 447 if a warrant is to be issued it should ordinarily be bailable. (See Schedule II Criminal Procedure Code).

Sd/- P.N.Lad,
Additional Secretary to Government.

U.R. to R.S. No.7982, dated the 21st May 1951.

L.Cs.

M.V.V.
13/6.

L.D.R.I. No.8538 dt.28/4/51.

Legal Department.

It is not clear from the Report of the Assistant Police Prosecutor to the D.S.P. that a prima facie case is made out against the Kulkarni. As far as this department is aware there is no provision for noting Court attachments in the Record of Rights. The Kulkarni, therefore, apparently gave a true extract of the entries in the Original Book. It is not established that the original book contained a reference to Court attachment and that the Kulkarni deliberately omitted that reference in the copy which he supplied to the complainant. It is, therefore, difficult to understand in what way the extract was "false and forged" as alleged in the draft Resolution of sanction. It is desirable that further inquiries be made as to whether the original Register contained a reference to the Court attachment and if that reference was omitted in the extract supplied by the Kulkarni to the intending purchaser.

2. It seems that the Civil Suit filed by the purchaser against the Kulkarni had to be withdrawn. It would be desirable to ascertain why that suit was withdrawn against the Kulkarni. A copy of the application for permission to withdraw the suit may be obtained together with the order of the Civil Court on the same.

3. As regards the alleged oral representations by the Kulkarni to the intending purchaser, it is possible that in the absence of anything in his Record relating to the Court attachment on the land he bona fide presumed that there was no such attachment. It is even possible that he may not have been aware of any attachment. Whether he had private knowledge of such attachment or not, there is no duty cast on the Kulkarni, in his official capacity, apart from supplying a true copy of the Record of Right entries, to give full and correct information of what he knows. Assuming, therefore, there was deliberate misrepresentation on the part of the Kulkarni in not disclosing to the intending purchaser the fact

of the Court attachement, it is doubtful if the offence under section 420 I.P.C. (cheating) can be said to have been committed by him "while acting or purporting to act in the discharge of his official duty" as contemplated by section 197 of the Criminal Procedure Code.

4. It seems, therefore, advisable that, sanction may not be granted until further information is obtained.

Sd/- P.N.Lad,

Additional Secretary to Government.

U.R. to R.D. No.6968, dated the 2nd May 1951.

4-Cs.

M.V.V.
14/6.

Office of the R.L.A.

Shri N.G.Chaubal was a cashier in the Provincial Textile Controller's Office. He was entrusted as such with the imprest advance. On 8-6-1950 the balance of that advance according to the cash book was Rs.6078-10-9. This balance was there at the end of the day as shown by the slip in Shri Chaubal's hand. The 9th of June was a working day but no transaction took plaue. The 10th and 11th were holidays. On the 12th a surprise check by the Head Accountant was made and Rs. 260/- were found short in the cash. Shri Chaubal made good the amount on the 14th.

A departmental inquiry was held against Shri Chaubal and as a result he was dismissed from service with effect from 3-7-1950 with a ban on his reemployment in Government service.

The temporary loss of Rs.260/- and the subsequent recovery were reported to the Accountant General as required by section II of Appendix 18 of the Financial Publication No.1 . The Accountant General drew attention to Rule 3 of section I of Appendix 18A of the Financial Publication No.I which reads as follows :-

"In any case in which it appears that recourse to judicial proceedings is likely to be involved, competent legal advice should be taken as soon as the possibility emerges. In case of losses involving a reasonable suspicion of fraud or other criminal offence, a prosecution should be attempted unless the legal advisers consider that the evidence available is not such as will secure a conviction. The reason for not attempting a prosecution should be placed on record in all such cases."

The Provincial Textile Controller therefore requests R.L.A. to advise. In making the reference the Provincial Textile Controller observes : "It is therefore doubtful whether at this stage any useful purpose would be served by taking

4-Cs.

M.V.V.
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recourse to judicial proceedings ——— From the inquiry report at pages 17-19 ante it however appears that evidence sufficient to secure a convition may not be available in this case."

There is no doubt there was shortage, but there is no evidence apart from an inference that he had taken the amount His own explanation was that the shortage may be due to his having either received less or paid more in some transactions. His statement also shows that he was not good at accounts and often made mistakes and he stated that this difference was due to his being not versed in accounts. This statement of his that he was not good at accounts was supported by other officers of the department in the departmental inquiry. He had been working as a cashier only for one month and in that period it was noticed that he made mistakes and was not fit for the post. There cannot therefore be any conclusive evidence that he had taken the amount much less that he had taken it dishonestly. Also the deficit on being detected has been made good. In these circumstances, the fact of the deficit by itself will not be sufficient to prove the offences. In the circumstances of this case a prosecution is therefore not worthwhile.

Sd/- J.R. Dhurandhar,
12/6.

Remembrancer of Legal Affairs.

U.R. to P.T.C. No. 9295, dated the 13th June 1951.

A-Cs.

M.V.V.
14/6.

Legal Department.

By Bombay Act No.XXXI of 1935 (p.1987, Bombay Code, Vol.II), the Criminal Procedure Code has been amended and unde the amended section 196 of the Criminal Procedure Code no sanction is necessary for prosecuting for the offence of person personation at an election,(s:171F. P.C.).

Sd/- P.M.Lad,
Additional Secretary to Government.

U.R. to L.S.G. & P.H.D. ; No.9098, dated the 9th June 1951.

4-Cs.

N.V.V.
14/6.

OFFICE OF THE R/ L.A.

Prosecution of Bhagwandas Ghallaram — Criminal Procedure Code, 1898. Secs.188-189.

If the police can collect sufficient material, the fact that Goa witnesses cannot be compelled to attend —— in Bombay will not seriously affect the conduct of the case as presumed by the Commissioner of Police. The offence in this case is committed out of India and the trial will be governed by the provisions of sections 188-189 of the Criminal Procedure Code. Section 189 enacts :-

" Whenever any such offence as is referred to in section 188 is being inquired into or tried, the State Government may, if it thinks fit, direct that copies of depositions made or exhibits produced before the Political Agent or a judicial officer in or for the territoty in which such offence is alleged to have been committed shall be received as evidence by the court holding such inquiry or trial in any case in which such court might issue a commission for taking evidence as to the matters to which such depositions or exhibits relate."

In pursuance of these provisions, it would be possible to admit the statements made before the Goa Court in evidence in the trial in Bombay. However, as the evidence so far collected is meagre, it may be advisable to investigate the case further and also to await the decision of the Goa Court in the prosecution launched against Marvin Mansion and further call for the original documents from the Goa Court.

Sd/- J.R.Dhurandhar,
8/6.

Remembrancer of Legal Affairs.

U.R. to P. & S.D. No.9203, dated the 11th June 1951.

4-Cs.

M.V.V.
14/6.

Legal Department.

The Home Department wants to know whether this is a fit case for an appeal.

2. The accused Shri Kondaji Ukhaji Shintre who was a Police Inspector was charged under section 165 I.P.C. with having accepted on the night of 15th September 1947 Rs.100/- without consideration from one Mathuradas Vasanji who was concerned as a complainant in certain cases filed by him against his wife and driver. The accused was a witness in those cases. The learned City Magistrate, Thane, acquitted him.

3. The Magistrate has discussed in detail all the relevant evidence led in the case. The direct evidence of payment of the money was of Mathuradas. He did not impress the Magistrate well and the Magistrate has given good reasons for not believing him. Besides, in law, he was an accomplice and his testimony ought to be corroborated in material particulars. The only corroboration was that after he came out of the house of the accused and gave a signal, the Police SubInspector Shri More and panchas went to the house of the accused and found a bundle of notes on his door step. That is what the panchanama states. The mere finding of the bundle on the door steps was of no great significance. The question was how it came there. Police Sub- Inspector More stated that he caught the accused with the bundle inside his house and there was scuffle and a struggle in which the accused threw this bundle there. The panch witness Pai did not support this story of the scuffle and struggle and the throwing. He stated that the bundle was there. The other witness who was present was one Railway Police Inspector Baindur. He corroborated More's story. It has, however, been shown that he is on bad terms with the accused.

4-Cs.

M.V.V.
14/6.

The.....

The probabilities were inconsistent with the story of the scuffle and the struggel and the throwing. The Magistrate has referred to those probabilities.

4. In the circumstances, this is not a fit case for an appeal.

Sd/- P.M.LAD,

Additional Secretary to Government.

U.R. to H.D. No,9599, dated the 18th June 1951.

4-Cs.

M.V.V.
14/6.

Legal Department.

Even when the police have refused to take action in a cognisable case the Magistrate can take cognisance upon receiving a complaint under section 190(1) (a) of the Criminal Procedure Code. It is therefore open to the complainant to file a complaint with the Magistrate.

Sd/- P.N.Lal

Additional Secretary to Government.

U.R. to L. & H.D. No.2883, dated the 6th June 1951.

4-Cs.

M.V.V.
14/6.

Sanction to prosecute Superintendent of Police.

Criminal Procedure Code, 1898, section 197 and

Bombay City Police Act, 1902, section 140(3).

The wording of section 197(1) shows that it will apply if "any public servant who is not removable from his office save by or with the sanction of a Provincial Government or some higher authority, is accused of an offence". The use of the word is at the two places above underlined shows that the status to be considered on the question of need of sanction is the status when he " is accused of any offence." (See Emperor vs. Suraj Narayan Chaube I.L.R. 1938 All. 776; Prasad Chandra vs. Emp. I.L.R. (1) 1944 Cal. 113 and Emp. vs. P.A. Joshi 50 Bom. L.R. 180). This position is implied also in sub - section (2) of section 197 by which the Centre Government or the State Government, as the case may be, may determine the person by whom the manner in which and the offence for which, the prosecution of the public servant is to be conducted. It shows that the status of the public servant at the time when he is accused is relevant.

2. Therefore in considering whether sanction under section 197(1) is necessary the status of Shri M. SOLOMON at the time he is accused of an offence is relevant. At the time he is accused of the offence Shri Solomon is a Superintendent of the B.C.P. Force and it is that status that has to be considered.

3. The question whether the prosecution is barre under section 140(3) of the City of Bombay Police Act 1902, is a judicial question as shown by the words "wherein it shall appear to the Court the offence if committed..... was of the character aforesaid, the prosecution..... shall not be entertained..... .....if instituted more than three months after the act complained of." Nevertheless it is a relevant question in considering whether sanction should be

4-Cs.

M.V.V.

14/6.

given. Shri R.J.Shah is alleged to have convicted in 1940 of an offence of criminal breach of trust under section 408 Indian Penal Code. He had however thereafter secured service in the Government under the Controller of Rationing. It is not unnatural that Shri Solomon as a Government servant should considers it his duty as such Government servant that this fact be brought to the notice of the Controller of Rationing - the employer of Shri Shah, who also was another limb of Government so that Government property may not be put in jeopardy. One of Shri Solomon's duties as a Police officer was in the prevention of crime in his section. Here he went beyond his his section but his act would be covered by the words "under colour or in excess of any such duty." Therefore section 140(3) would apply.

Sd/- J.H.'Dhurandhar,
13/6.

Remembrancer of Legal Affairs.

U.R. to H.D. NO.9336, dated the 13th June 1951.

4-Cs.
H.V.V.
14/6.

Legal Department.

The view taken by the Secretary, H.D. is correct. The power of remission under section 401 of the Criminal Procedure Code can be exercised by Bombay Government alone who have the power of remitting sentences passed by the Bombay High Court. The words " Appropriate Government " in section 401(1) of the Criminal Procedure Code obviously refer to the State Government in the territorial limits of whose jurisdiction the prisoner was convicted. (Cf. H.L.A.'s opinion No.18/29 dated 17-7-1929). As regards other matters relating to treatment etc. the prisoner would obviously be governed by the rules of the State where he is transferred.

Sd/- P.H.Lad,
Additional Secretary to Government.

U.R. to H.D. No.9374, dated the 14th June 1951.

4-Cs.

M.V.V.
14/6.

Office of the R.L.A.

Shri A.R.Khan,I.C.S., who was at the relevant time Joint Secretary in the Political and Services Department, the Government of Bombay, applied on 27-5-1947 for an advance of Rs. 10,000/- for purchase of a motor car. Sanction to the grant of an advance of Rs. 10,000/- was given by Government Resolution dated 30-5-1947 (Slip H). The Resolution provided that Shri Khan should purchase a motor car within one month of the drawing of the advance and shall then execute a mortgage bond in respect of the car. The advance was paid on 22-7-47. Therefore he was to purchase the car by 22-8-1947 and was then to execute a mortgage bond. Before he could do so, the question for opting for Pakistan came up and he opted for Pakistan on 15-8-1947 and left India for Pakistan. Now till the date he left he had not purchased a car. Instalments towards the advance had been recovered from his pay and the amount remaining on the date he left was Rs.9582/-.After he left for Pakistan, he has been deducting from his pay every month Rs.209/- towards the advance.

2. The Bombay Government has not yet been paid by the Pakistan Government the deductions which Shri Khan has made from his pay in Pakistan. The matter is under correspondence.

3. The Labour and Housing Department in which Shri Khan was working when he got the advance wants R.L.A. to advise whether Shri Khan can be prosecuted on the ground of having played fraud on the Govern-ment or for breach of faith.

4. The facts do not at all warrant any such prosecution. Shri Khan could not purchase the car and did not therefore execute a mortage bond because

4-Cs.
M.V.V.
14/6.

in the meanwhile he had to go to Pakistan due to political events. Even after going there he has continued to deduct the amount of instalment from his salary. There is therefore no case for a prosecution.

Sd/- J.R. Dhurandhar,
19/6

Ranembrancer of Legal Affairs.

U.R. to L. & H.D. No.9870, dated 21st June 1951.

4-Cs.

N.V.V.
14/6.

Office of the R.L.A.

A revised draft of the O.R. is forwarded herewith.

2. The attention of R.D. is, however, invited to model forms of sanction sent to all the departments along with the R.L.A's Circular No.9263 dated 16-8-1949 as corrected by Circular No.14846 dated 21-12-1949. Attention is also invited to the closing lines of the first paragraph of Circular No.9263 dated 16-8-49 that "Such sanction orders need not hence forward be referred to the Remembrancer of Legal Affairs for scrutiny, unless there is any particular point involved on which the Remembrancer of Legal Affairs opinion is considered necessary." In the present case there is nothing to show, and the Revenue Department does not state, that any particular point is involved. In future this may be borne in mind.

Sd/- J.R.Dhurandhar,
17/6

Remembrancer of Legal Affairs.

U.R. to R.D. No.9731, dated the 20th June 1951.

A.Cs.

M.V.V.
14/6.

Legal Department.

So long as an offence is under investigation, the duty of the police in respect of future attendance in Court of witnesses examined during the investigation is to take a bond as contemplated by section 170(2) of the Criminal Procedure Code, 1898. That bond is to be according to Form No.XXVI of Schedule V of the Act. The bond does not contemplate the giving of a surety but requires the person to bind himself to forfeit to the State a specified sum of money. The bond therefore does not specifically rule out the taking of a cash security, but the question has to be considered in the light of section 513 Criminal Procedure Code which applies to all bonds. If so considered the conclusion is that cash security in lieu of executing the bond can be accepted if offered but cannot be demanded (see Abdulgani vs. Emperor 48 Cr.L.J. 773 and R.R. Chari vs. Emperor 49 Cr. L.J. 282).

After the accused is charge-sheeted, when on the date fixed the witness is not present for being examined in the Court as required by section 252(1) of the Criminal Procedure Code a summons is to issue to the witness under sub-section (2) of section 252. That summons is in form No.XXXI of Schedule V of the Act. It is not clear from the record whether the police requested the Court to issue a summons to Bai Asha when the case came up and she was not present in accordance with the terms of the bond. The police could also have asked for a warrant under section 90 of the Code. It does not appear that a warrant for Bai Asha was asked for.

Sd/- P.M.Lad,
Additional Secretary to Government.

U.R. to H.D. No.10259, dated the 28th June 1951.

4-Cs.

M.V.V.
14/6.

Legal Department.

For an offence under section 409, I.P.C., no sanction under section 197, Criminal Procedure Code, is necessary because in and while misappropriating property entrusted to his care the public servant concerned cannot in respect of the said act be/to be "acting or purporting to act in discharge of his official duty" (See Gurushidayya Kantvirayya vs. Emp. I.L.R.1939 Bom. 119 and Hori Ram Singh vs. Emp. A.I.R. 1939 F.C.43).

Sd/- P.N.Lad,

Additional Secretary to Government.

U.R. to R.D. No.11623, dated the 23rd July 1951.

4-Cs.

M.V.V.
14/6.

LEGAL DEPARTMENT.

Attachment of Lands.

Criminal Procedure Code,1898, Sec.146(1).

Since the property has been attached in this case under section 146 sub-section (1) of the Code of Criminal Procedure, the attachement will have to be continued until a competent Court has determined the rights of the parties thereto or the person entitled to possession thereof under sub-section (1), or until the District Magistrate or the Magistrate who has attached the subject of the dispute is satisfied that there is no longer any likelihood of the breach of peace with regard to the subject of the dispute. (See the proviso to sub-section (1)). It appears that the parties have not gone to the Civil Court to have their rights determined. The only alternative is to have recourse to the proviso to section 146 sub-section(1). To enable the Magistrate to release the property ~~xkm~~ from attachment under that proviso the Magistrate is to be satisfied that there is no likelihood of breach of peace. If the parties come into Court and assure the Magistrate that there is no likelihood of breach of peace he can withdraw the attachment. If the leases granted to the opponents in Miscellaneous Application No.12/1950, in which the attachment has been ordered, are terminated by Government they will~~mx~~ have no interest in the lands. The Chairman of the Society, at whose initiative these proceedings were taken, does not appear to possess any valid right to these lands. Consequently, a notice terminating the leases to the opponents may be given and these persons and the Chairman of the Society may be persuaded to appear before the Magistrate to state that they have no objection to releasing the property and give possession thereof to Government.

Sd/- P.N.Lad,

Additional Secretary to Government.

U.R. to A. & P.D. No., 10636, dated the 4th July 1951.

4-Gs.

M.V.V.
14/6.

Office of the R.L.A.

The view expressed by the Home Department at 'A' in their office note dated ~~him~~ the 26th June 1951 is correct. Under section 12 of the Criminal Procedure Code, 1898, it is for the State Government which appoints the magistrates to define the local areas within which they may exercise the powers with ~~which~~ they may be invested. That territorial jurisdiction cannot therefore be extended by an order issued by another Government.

Sd/- J.R.Dhurandhar,
17/7.

Remembrancer of Legal Affairs.

U.R. to H.D. No.11397, dated the 18th July 1951.

4-Cs.

M.V.V.
14/6.

Legal Department.

The designation of the person to whom the application of Shri Khatubhai Ranchhodbhai was addressed cannot be said to be vague. A copy of that application is in the papers (Page 15 of the main file). Therein the designation given is " Home Guard Minister, Revenue Department Minister". In his statement dated 16.8.1950 (page 19) Shri Khatubhai states that he ahd made the application to the Honourable the Minister. The letter of the Assistant Secretary to the Government of Bombay, Revenue Department, dated 25.10.1950 (p. 7 of the second file) shows that the application was addressed to the Honourable Minister, Home & Revenue Department. There - fore there is no vagueness about the person to whom the application was addressed by Shri Khatubhai.

Therefore having regard to section 195(1) of the Criminal Procedure Code, the Hon 'ble Minister, Home and Revenue Department, will have to file the complaint. The complaint is to be in writing. Having regard to clause (aa) of section 200 of the Criminal Procedure Code, it is not incumbent on the complainant to appear before the Magistrate to lodge the complaint.

Sd/- P.M.Lad,

Additional Secretary to Government.

U.R. to R.D.No. 11725, dated the 24th July 1951.

4-Cs.

M.V.V.
14/6.

Legal Department.

The presumption of the Home Department that fresh prosecutions are maintainable as the previous prosecutions failed on purely technical grounds viz. misjoinder of charges and absence of Government sanction is correct.

Sd/- P.M.Lad,
Additional Secretary to Government.

U.R. to H.D. No.12317, dated the 1st August 1951.

4-Cs.

M.V.V.
14/6.

LEGAL DEPARTMENT.

Secretary, H.D's view that section 44 of the Criminal Procedure Code does not apply and section 174 of the Code as not relevant is correct. Section 45(1)(d) of the Criminal Procedure Code also does not apply (See in the matter of Madhoóscodan Chuckerbutty Southerland Weekly Reports Vol.XXIII Cr. Ruling page 60; Queen Empress vs. Achutha 12 Mad 92 and Emperor vs. Hira Satwa 53 Bom. 184).

Sd/- P.N.Lad,
Additional Secretary to Government.

U.O. to H.D. No.12587, dated the 6th August 1951.

4-Cs.

M.V.V.
14/6.

Legal Department.

Two copper pots of one Narayan Vithal Habbu of Haldipur were stolen in May 1941. They were found in possession of one Hasti Jatti who on inquiry by the police said that he got them from one Konna Rama. Therefore Konna Rama was prosecuted in the Honavar Magistrate's Court under section 379 Indian Penal Code, and Hasti Jatti was prosecuted in the Kumta Magistrate's Court under section 411, Indian Penal Code. The accused in both cases were convicted but inconsistent orders were made by the Magistrates in respect of the property. The Honavar Magistrate who decided the case first (on 15th October 41) ordered the property to be returned to the heir of Narayan Vithal. But the heir of Narayan namely his daughter Ambibabai did not take away the property. Then the case before the Kumta Magistrate came up for hearing and the property was produced there and when the case was decided on 22nd September 42, the Kumta Magistrate ordered the property to be returned to one Shankar Das Shetti who claimed to be the owner and it was accordingly returned to him on 25th November & 42.

2. Now eight years after that Ambibabai makes an applica - tion through Shri Shastri M.L.A. to the Hon'ble Minister (Home) that the two pots may be ordered to be returned to her. The Home Department is of the view that she should be informed that it was for her to take suitable measures for the re - covery of her property immediately after it was ordered to be returned to her by the P.M. Honavar or she should have taken legal steps against Shri Shankar Das Shetti to whom the pro - perty was ordered to be returned by the First Class Magistrate Kumta.

3. It is clear that the Magistrate Kumta was acting within the terms of section 517 of the Criminal Procedure Code, 1898, when he ordered return of the property to Shri Shankar Das Shetti. Therefore, the reply proposed by the Home Department to be given to Shrimati Ambibabai is correct.

Sd/- P.M.Lad,
Additional Secretary to Government.

U.O. to H.D, No.10473,dated the 2nd July 1951.

4-Cs./M.V.V./14.6

Office of the R.L.A.

Under section 174(5) of the Criminal Procedure Code District Magistrates, Sub-Divisional Magistrates and Magistrates of the First Class specially empowered in that behalf can hold inquests. There is no specific provision in the Code of Criminal Procedure which precludes a District Magistrate from exercising this function in the circumstances of the present case. Section 556 of the Criminal Procedure Code, however, precludes a Judge or Magistrate from acting as a Judge or Magistrate in a matter in which he is a party or is personally interested, without the permission of the Court to which he is subordinate. That section however in terms applies only to committal proceedings, trial of cases and hearing of appeals. Section 556 is based on the well-established rule of justice the important object of which is to clear away everything which might engender suspicion and distrust in the tribunal and to promote the feelings of confidence in the administration of Justice which is so essential to social order and security (see 2 Q.B.558). As observed by Their Lordships of the Allahabad High Court in 13 Allahabad 171 :-

> "It is an unshaken doctrine of human jurisprudence that no man can be judge in his own case (Nemo debet esse judex in propria sua causa). This maxim rests not upon any suspicion as to the honesty of the Judge or his capacity for the purposes of adjudications, but it rests upon a thing higher than the technicalities of law. It rests upon the philosophy that says human beings are after all human beings, and with all honour due to the honesty and integrity of the Judge, they are not to hear cases in which they are themselves concerned."

These observations might will equally apply even to inquests. It would, therefore, have been proper and advisable if the District Magistrate had not personally held the inquest.

Sd/- J.R.Dhurandhar,
30/6.
Remembrancer of Legal Affairs.

U.R.to H.D. ,No.10453, dated the 2nd July 1951.

XX/H.
4-Cn.
H.V.V.
14/6.

Legal Department.

The question for consideration is whether a Special Magistrate be appointed to try the cases against the Managing Agents of the Sholapur Mills.

2. There are three cases against the Managing Agents of the Sholapur Mills:

(1) One is in respect of the high denomination notes. It is being heard by the Presidency Magistrate, 23rd Court, Bombay and is part heard.

(2) Another is for criminal breach of trust and is pending before the City Magistrate, Sholapur.

(3) The third is a fraud case still under investigation by the Police.

As regards the first case as the offence presumably is triable by a Presidency Magistrate, Bombay, and is, in fact, being so tried, the appointment of a Special Magistrate under section 14 of the Criminal Procedure Code would not be competent. As regards the third case, it is not clear where the offence took place and what stage the investigation has reached. It is, therefore, too early to appoint a Special Magistrate in that case. In respect of the second case there is a good case for the appointment of Special Magistrate because (i) the City Magistrate before whom the case is pending must be having much other work, (ii) the hearing of the case has not yet begun before him, and (iii) the hearing once begun will take about six months even if continued from day to-day as reported by the Special Public Prosecutor.

Sd/- P.M.Lad,

Additional Secretary to Government.

U.R. to F.D.No.14736,-Confl., dated the 17th September 1951.

A-Cs.

H.V.V.
11/6.

Legal Department.

The view taken by the Secretary, Labour and Housing Department is ~~xxxx~~ correct. Shri H.P. Bhandare will have to attend as a witness and may, if necessary, be summoned to so appear. The Inspector who has succeeded Shri Bhandare in office can conduct the case with the Court's permission (see s.4(r) of the Criminal Procedure Code). If that permission is not forthcoming either the Public Prosecutor, Bombay, or the Police Prosecutor attached to the Court where the cases are pending may be engaged. Having regard to the nature of the cases the services of a Police Prosecutor may suffice

Sd/- P.K.Lad,

Additional Secretary to Government.

U.R. to L. & H.D. No.15047, dated the 21st September 1951.

L-Cs.

M.V.V.
14.6

Legal Department.

The view taken by the Home Department at 'A' in their note dated 12-9-51 is correct. The Bank will be able to urge its contentions before the attaching authority, viz., the Chief Judge of the Court of Small Causes, Bombay, and in case the said authority decides against the Bank, the Bank has a right of appeal to the High Court (see sections 4, 5 and 11 of the Criminal Law Amendment Ordinance, 1944, No.XXXVIII of 1944). The matter is now sub-judice and the Government need not interfere.

Sd/- P.H.Lad,

Additional Secretary to Government.

U.R. to H.D. No. 15051, dated the 21st September 1951.

4-Cs.

M.V.V.
14/6.

Legal Department.

The view of the Home Department that prisoners transferred to an confined in the Jails of the Bombay State will, in the absence of specific orders by the Court convicting them, be governed in the matters of classification, which is meant to regulate treatment to be given to the prisoners in Jails, by the rules of the Bombay State is correct.

Sd/- P.H.Lad,
28/9.

Additional Secretary to Government.

U.R. to H.D.No.15556,- Confl.dated the 29th September 1951.

4-Cs.

M.V.V.
14/6.

Legal Department.

Subject to the rules made by the State Government, criminal court has under section 544 Criminal Procedure Code the discretion to order payment on the part of Government of the reasonable expenses of any complainant or witness attending for the purposes of any inquiry, trial or other proceeding before such court. This Government have made rules under section 544 Criminal Procedure Code for regulating the payment on the part of Government of these expenses of complainants and witnesses in cases coming before the Criminal Courts. And by these rules which are for the guidance of such courts, Government have prescribed the maximum allowances to be paid. They are laid down in criminal circular No.18 of the Criminal Manual. Rule (6) of the said criminal circular provides that in peculiar cases which are not covered by rules (2), (3), and (4), the court has the discretion to deal with them on merits. If the case of Shri Dawlatjada is intended to be treated as a peculiar case Government can at best ask the court to use its discretion to grant such of the allowance asked for by Shri Dawlatjada, as can be ——— considered his reasonable expenses in attending the court for the purposes of the trial.

Sd/- P.M.Lad,
Additional Secretary to Government.

U.R. to P.D. No. 15413, dated the 26th September 1951.

4-Cs.

M.V.V.
14/6.

Legal Department.

As the District Magistrate, Dharwar's letter dated the 31st July 1951 shows that the original Record of Rights contained a pencil entry relating to the attachement which entry had been made in pursuance of paragraph 32 of the Manual of Revenue Accounts, the act of Shri Basappa Ningappa Kulkarni in giving a certified copy which omitted all reference to the entry relating to the attachment was in the circumstances of the case actionable under sections 420 and 468 of the I.P.C. Sanction for his prosecution may therefore issue under section 197, Criminal Procedure Code. A revised draft of the sanction is appended.

Sd/- P.M.Lad,

Additional Secretary to Government.

U.R.to R.D. No.14538, dated the 12th September 1951.

A-Cs.

M.V.V.
14/6.

Legal Department.

The view of the Home Department that the allegations of Shri Padhiar against the Deputy Inspector General of Police, District, District Superintendent of Police, Additional District Superintendent of Police and Police Inspector, Ahmedabad, and the facts on which these allegations are based are not such as to justify the granting of sanction under section 197, Criminal Procedure Code for their prosecution by Shri Padhiyar, is correct. As regards the Police Sub-Inspector, the Jemadar and the Head-clerk no sanction under section 197 for their prosecution is necessary because, as pointed out by the Home Department, they do not fall within the category of public servants to which section 197 applies.

Sd/- P.M.Lad,
Additional Secretary to Government.

U.O. to H.D. 15723, dated the 4th October 1951.

4-10.

M.V.V.
14/8.